

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 391 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHBHAI U PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 391 of 1992
MR AB MUNSHI for MR AJ PATEL for Petitioner No. 1
MR KC SHAH,APP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 22/01/2002

ORAL JUDGEMENT

1. The appellant who is the original accused in Special Case No. 17 of 1991 has challenged the judgment and order of conviction and sentence dated 30.4.1992 passed by the learned Sessions Judge, Nadiad convicting

him for offence punishable under section 3(1)(10) of the SC/ST (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') and under sections 504 and 506(2) of the IPC. The learned judge imposed sentence to suffer S.I. for six months and to pay a fine of Rs. 500/-, in default, to undergo S.I. for one month for offence punishable under the Act. The appellant was also sentenced to pay a fine of Rs. 200/-, in default, to undergo S.I. for 15 days for offence punishable under section 504 of IPC and S.I. for three months and a fine of Rs. 500/-, in default, to undergo S.I. for one month for offence punishable under section 506(2) of IPC. The learned judge ordered both the sentences to run concurrently.

2. The incident in question had taken place at village Siswa of Borsad taluka on 7.3.1991 at about 1.30 p.m. when the appellant intentionally insulted with intent to humiliate the prosecution witnesses who are the members of SC/ST and also gave threat to set ablaze the entire area where the prosecution witnesses are residing and to kill them.

3. The incident in question took place on 7.3.1991 at village Siswa of Borsad taluka. On 4.3.1991, Sarpanch of the village Shaileshbhai Patel had beaten Dinesh Lakhabhai of Vankar community (SC community) regarding money dispute of labour work with the result that the bitterness and tension prevailed between the two communities. Police bandobast was arranged to avoid any untoward incident with a view to maintain peace and to solve the problem, a team comprising of Circle Police Inspector Bankim Nanavati, PW 5, Mamlatdar Borsad, Prant Officer and Sub Divisional Magistrate, Petlad and the appellant, in the capacity of a reputed citizen, reached village Siswa. In the panchayat office, they called the leading persons of Vankar community and village people. Since nobody from Vankar community came at the panchayat office, the Peace Mission went to Vankar Vas at about 1.30 p.m. It is alleged against the appellant that in Vankar Vas, he insulted PW 3 Vinod Makwana, PW 2 Punam Karsan, Rajeshbhai, PW1 and Gangaben by uttering "You dhedhas (abuse to Vankar community in an extreme manner), what are you going to get ?, I have got enough money; even if I were to spend Rs. 25 lacs, I would spend; I will set ablaze the entire Dhedwada (Vankar Vas)". Rajendrabhai Parmar, President of Vankar Yuvak Mandal who was not present at the time of the incident, on his returning in the evening, it was decided to file a complaint against the appellant and accordingly, on the next day, at about 5.15 p.m., complaint under section

3(1)(10) of the Act as well as under section 504 and 506(2) of the IPC was filed.

4. The prosecution, in order to bring home the charge, examined Rajendrabhai Parmar, PW 1 Ex.9, Punam Karsan, PW 2 Ex.10, Vinodbhai Makwana, PW 3 Ex.11, Head Constable Prabhatsinh Vaghjibhai, PW 4 Ex.13 and Bankim Nanavati, PW 5 Ex.15. The appellant, in his statement under section 313 of the Code of Criminal Procedure, denied his involvement in the offence by filing a written reply Ex. 28 inter alia stating that he was falsely involved in the offence with a view to get substantial amount from him.

5. The learned trial judge, after considering the evidence on record, was of the opinion that the prosecution, in the instant case, has successfully established the guilt of the accused and accordingly convicted and sentenced the appellant as stated above.

6. Learned Counsel Mr. Munshi, appearing for the appellant, after inviting my attention to the evidence on record, submitted that the evidence consisting of prosecution witnesses who are highly interested witnesses is not at all believable. He further submitted that the appellant has been falsely involved in the instant case with a view to get substantial amount from him which is evident from the fact that the complaint in the instant case is filed very late i.e. after more than 24 hours though the concerned police station is at a distance of hardly 4 to 5 k.ms. from the village.

7. Learned APP Mr.K.C.Shah, on the other hand, while supporting the judgment of the trial court, submitted that the evidence of prosecution witnesses is natural and consistent and nothing has been elicited from the cross examination of any of the prosecution witnesses. Regarding late filing of complaint, the learned APP submitted that police bandobast was arranged in the village in view of the previous incident of 4.3.1991 when Dinesh of Vankar community was beaten. According to learned APP, CPI Nanavati left Vankar Vas at about 2.30 p.m. and returned on the next day. Therefore, the complaint was given to him being the superior officer on the next day and, thus, the delay is sufficiently explained and in any case, it will not affect the merits of the case. Learned APP further submitted that the uncordial relations did prevail between the two classes and if nothing is brought out in the cross examination, the prosecution version is required to be accepted. Finally, it was submitted that the defence has failed to

point out anything as to why false complaint was filed. In the circumstances, it was submitted by the learned APP that the appeal is required to be dismissed.

8. The complainant Rajendra Parmar, PW 1 Ex.9 is of Vankar community being a ST community. He, in his evidence, has stated that he is a student studying in the First Year of B.Com. in a college at Borsad town. He is commuting from village Siswa to Borsad. He returns from college everyday at 12.00 o'clock. He is the President of Yuvak Mandal known as Everest Yuvak Mandal. The Mandal is helping the cause of justice to the members of their community. He has given details of both the communities in his evidence. According to him, in the panchayat election which took place on 9.12.1990, there were two candidates for the post of Sarpanch. Shaileshbhai Patel and Ratilalbhai Patel were the candidates for the said post. According to him, Shaileshbhai was under the belief that members of Vankar community had not voted in his favour and, therefore, he bore grudge against them. According to him, on 4.3.1991, Dinesh Vankar, residing in his area, was beaten by one Natubhai Patel on account of dispute regarding labour charges. He came to know about the incident when he returned from college at 11.30 a.m. On making inquiry about the incident from Dinesh, Dinesh told him that when he was to go to file complaint, he was again beaten by Sarpanch Shaileshbhai Patel, Shambhubhai Patel and Natubhai Patel. As the complaint was filed against them, Patels of the village got excited and by calling a meeting of Patels, they decided to boycott the members of Vankar community by not calling them for labour work, by not providing water to their fields and by discontinuing their share in the yield by selling commodities at higher price and to pay less price for the milk.

On 7.3.1991, he had gone to Anand and when he returned in the evening, he was told by Gangaben, Rajeshbhai and Punambhai about the incident having taken place at 1.30 p.m. when the appellant came to Vankar Vas and gave abuses and threats to them. He accordingly called the meeting of Yuvak Mandal and passed a resolution to file complaint. Accordingly on 8.3.1991, he filed the complaint before Dy. Superintendent of Police Shri Sohal.

9. Punam Karsan, PW 2 Ex.10 as well as Vinod Makwana PW 3 Ex.11 have given identical version supporting the case of the complainant. Therefore, it is not necessary to re-narrate their evidence as it would be a mere repetition. The complainant, in his cross examination,

has admitted that the appellant is doing the business of money lending at Borsad town and is also residing there. He has also admitted that the Sarpanch Shaileshbhai had cleaned the village after becoming Sarpanch and the village people were happy and satisfied with his work. He has also admitted that he had not seen the incident of beating Dinesh. He has also admitted that on 7.3.1991, Mamlatdar, Dy. Superintendent of Police, Officers from the Social Welfare Department and other persons came for the purpose of maintaining peace in the village and had impressed upon the persons of both the communities. According to him, a meeting to file complaint was convened at 9.00 p.m. According to him, there was no reason to call the meeting at such an odd hour. He has admitted that Bhadaran police station is 5 k.ms. away from his village and one can reach Bhadaran by rickshaw, bus or any other conveyance. He has admitted that the complaint was filed at 4.45 p.m. on 8.3.1991. He has explained the late filing of complaint by stating that the appellant being a rich and influential person, and because of the fear of Sarpanch Shaileshbhai, it was not possible for them to come out of their house. He has denied the suggestion of demanding Rs. 5 lacs from appellant failing which he would see to it that he would be sent to jail. He has also denied that the appellant had come and threatened other prosecution witnesses that a false complaint was filed with a view to extort money from the appellant. As far as other prosecution witnesses are concerned to whom threats were given by the appellant, nothing substantial has been brought out in the cross examination. Reading the evidence of aforesaid prosecution witnesses as well as evidence of CPI Bankim Nanavati, PW 5 Ex. 15, it is clear that the Peace Mission consisting of police officers, Mamlatdar as well as Social Welfare Officer and the appellant, in the capacity of a respectable person of the village, had reached the panchayat office at 12.00 noon in village Siswa with a view to ease the tension and bitterness and to find out solution with respect to the incident of 4.3.1991. It is clear that the Peace Mission had gone to Vankar Vas at about 1.30 p.m. If the appellant had accompanied the Peace Mission and remained with them upto 1.30 p.m. on the day in question, the question that arises for my consideration is as to why should the appellant behave in such an unusual manner. As he has accompanied the officers in the capacity of reputed person of the village, his task was to solve the problem by convincing both the communities to arrive at some settlement. As per the evidence of PW 5 Bankim Nanavati, CPI, the appellant had left village Siswa at about 1.30 p.m. and so long as he was there in the village, nobody

brought to his notice about any untoward incident having taken place in the village. PW 5 Nanavati has also stated that the members of Peace Mission had remained in the village till 2.30 or 3.00 p.m. and nobody from Vankar community had come with any complaint regarding the incident having taken place at 1.30 p.m. The evidence of PW 5 Nanavati will clearly go to show that the appellant was with the members of Peace Committee upto 1.30 p.m. and no untoward incident had taken place till 2.30 or 3.00 p.m. In light of this evidence, if we consider the evidence of the aforesaid prosecution witnesses who have alleged that the appellant had come to their area at about 1.30 p.m. and had insulted them by giving abuses and threats, it would make their version doubtful. As stated above, it is more unlikely that the appellant would misbehave with prosecution witnesses in presence of officers, especially when he had accompanied them with some mission. Apart from that, the timing of the incident as per the say of the prosecution witnesses is at or about 1.30 p.m. while as per the evidence of PW 5 Bankim Nanavati, CPI, at that time, the appellant was in the company of officers. Even though the other members of the Peace Mission had stationed at the village and the appellant had left the village, the prosecution has not brought out that after Government officers leaving Vankar Vas at about 1.30 p.m., the appellant had come and abused.

10. If we accept the parrot-like version of all the prosecution witnesses in toto, there is no option but to hold the appellant guilty of offence for which he was charged. However, one can find out the truth only while lifting the veil. As stated above, PW 5 Bankim Nanavati, CPI has stated in no uncertain terms that during their stay in village at 2.30 or 3.00 p.m., nobody brought to their notice any untoward incident having taken place in the village. If the allegations of prosecution witnesses against the appellant are accepted, the appellant has committed a serious offence. In that event, the police officer who was present in the village could have come to know about the same. It is quite unnatural that all the persons of Vankar community would wait till the complainant arrives from Anand especially when the highest police officer of the area was present in their village itself. In view of the fact that Bhadaran police station was at a distance of 4 to 5 k.ms. from village Siswa, it could have been informed about the incident having taken place at 1.30 p.m. Assuming that PW 5 Bankim Nanavati, CPI and other officers were not there after 3.00 o'clock, in any case, four police constables were there maintaining law and order. However,

surprisingly, no attempt was made by any of the prosecution witnesses to inform them about the incident having taken place at 1.30 p.m. All the prosecution witnesses were in fact waiting for the complainant to come and after due deliberation, it was decided at 9.00 p.m. on that day to file complaint against the appellant. Thus, many opportunities were available for the prosecution witnesses to inform the police about the incident having taken place at 1.30 p.m., but nothing of the sort was done which raises a doubt about the genuineness of the incident. A suggestion was put to the prosecution witnesses that a false case was filed against the appellant with a view to blackmailing him. Therefore, the attempt on the part of the prosecution witnesses to falsely involve the appellant cannot be ruled out. The only explanation for late filing of complaint given by the complainant to the effect that the appellant being a rich and influential person and because of the fear of Sarpanch Shaileshbhai Patel, they were in the house and could not come out to file the complaint, is not at all acceptable and is required to be rejected for the simple reason that it has come in the evidence that the complainant himself had filed a complaint against Patel Shaileshbhai. My attention has been invited by the learned Counsel appearing for the appellant to the decision rendered in the said case by the learned Addl. Sessions Judge in Special Case No. 40 of 1991 wherein Natubhai Patel, Shaileshbhai Patel and Shambhubhai Patel have been shown as accused persons with respect to the incident of 4.3.1991 wherein Dinesh Vankar was insulted and beaten by the accused. The learned trial judge, by his judgment and order dated 30.6.1994, acquitted all the accused in the said case for offences punishable under sections 323, 504, 506(2) read with section 114 of the IPC and section 3(1)(10) of the Act. Similarly, in Special Case No. 41 of 1991, where Shaileshbhai Patel is shown as accused for offence punishable under sections 3(1)(10), (13), (14) and (15) of the Act where the present complainant is the complainant, the learned 2nd Extra Assistant Judge, by his judgment and order dated 30.6.1993, acquitted the said accused. This would, on the contrary, go to show that the complainant has made unsuccessful attempts by filing complaints against the members of a particular community. In the instant case, the complainant has filed the complaint on the next day i.e. after more than 24 hours. Thus, late filing of complaint in the instant case is with some oblique motive. The suggestion put to prosecution witnesses to blackmail the appellant cannot be ruled out in such circumstances. The learned trial judge, in the instant case, has not appreciated the

evidence of prosecution witnesses in proper perspective. Thus, considering the entire evidence on record, I am of the opinion that it would be unsafe and hazardous to rely upon the oral evidence of prosecution witnesses who are highly interested witnesses. Except the allegations in the form of bare words, there is nothing on record to make the appellant liable for the offences for which he is charged. The possibility of falsely involving the appellant in the instant case cannot be ruled out in view of the fact that similar unsuccessful attempt was also made to involve the Sarpanch and other villagers of a particular community.

11. In view of the above discussion, I am of the opinion that the prosecution, in the instant case, has failed to prove the charge beyond reasonable doubt and it is, therefore, held that the appellant has not committed any offence for which he was charged.

12. In the result, this appeal is allowed. The judgment and order dated 30.4.1992 passed by the learned Sessions Judge, Kheda at Nadiad in Special Case No. 17 of 1991 is set aside. As the appellant is on bail, the bail bonds stand cancelled. Order accordingly.

(Kshitij R.Vyas,J.)

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